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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/353,592	07/15/1999	ANDRES RIVERA	101054	3821
27049	7590	03/16/2004	EXAMINER	
OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320			HON, SOW FUN	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 03/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/353,592

Applicant(s)

RIVERA ET AL.

Examiner

Sow-Fun Hon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Declaration***

1. The declaration under 37 C.F.R 1.132 filed 12/03/03 is acknowledged.

### ***Rejection Repeated***

2. The 35 U.S.C. 103(a) rejection of claims 1-32 over Leung et al. are repeated for the same reasons previously of record in the action mailed 09/03/03.

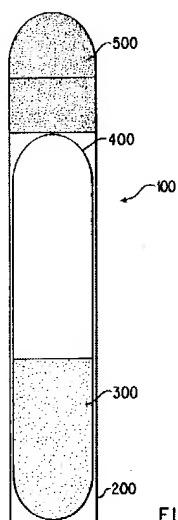
### ***Response to Arguments***

3. Applicant's arguments filed 12/03/03 have been fully considered but they are not persuasive.
4. Applicant argues that the declaration under 37 C.F.R 1.132 filed 12/03/03 demonstrates and establishes unexpected results in that the data indicate that a significant and unexpected result is obtained by disposing the rate modifier for the polymerizable or cross-linkable material on an outer surface of the inner container, rather than the applicator tip.

Applicant is respectfully apprised that the demonstration of unexpected results should be directed to the comparison of samples with the rate modifier disposed on an inner surface of the outer container, as specifically taught by Leung (column 10, lines 43-53), and samples with the rate modifier disposed on an outer surface of the inner container, as claimed by the present application. Thus the declaration filed 12/03/03 is not valid and hence not persuasive. The statement of obviousness is repeated below.

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Leung teaches that the container 200 holding the polymerizable and/or crosslinkable material 300 in frangible vial 400 may comprise the rate modifier wherein the material is stored separately within the applicator container so as not to contact the rate modifier within the container. The inner (internal) surface of container 200 may be lined or coated with the rate modifier (column 10, lines 43-53).



Leung's teaching that the polymerizable and/or crosslinkable material should not contact the rate modifier provides the motivation to separate the material from the rate modifier. Thus it would have been obvious to one of ordinary skill in the art to have coated the rate modifier on the surface of frangible container 400 as an alternative. The rate modifier would still be in the same space between the outer wall of the body 200 and the inner wall of the container 400, just on the outer wall of the container 400 instead of the inner wall of container 200, still separated from the polymerizable and/or crosslinkable material.

5. Applicant states that test samples wherein the rate modifier is disposed on an inner surface of the outer container, as specifically taught by Leung (column 10, lines 43-53), could

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not be prepared as the solvents used to apply the rate modifier caused deformation of the butyrate tube. Applicant is respectfully reminded that only structure is presently claimed.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Sow-Fun Hon whose telephone number is (571)272-1492. The examiner can normally be reached Monday to Friday from 9:00 AM to 5:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (571)272-1498. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Sow-Fun Hon

03/01/04

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

3/5/04